

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

V.

The Pep Boys Manny Moe & Jack of California, a California Corporation; and Does 1-10,

Defendants.

Case No.

Complaint For Damages And Injunctive Relief For Violations Of: American's With Disabilities Act; Unruh Civil Rights Act.

Plaintiff Scott Johnson complains of The Pep Boys Manny Moe & Jack and Does 1-10 (“Defendants”), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.
2. In March 2015, Defendant The Pep Boys Manny Moe & Jack was the

1 real property owner of the building/parcel located at or about 520 Contra
2 Costa Boulevard, Pleasant Hill, California.

3 3. In April 2015, Defendant The Pep Boys Manny Moe & Jack was the real
4 property owner of the building/parcel located at or about 520 Contra Costa
5 Boulevard, Pleasant Hill, California.

6 4. In May 2015, Defendant The Pep Boys Manny Moe & Jack was the real
7 property owner of the building/parcel located at or about 520 Contra Costa
8 Boulevard, Pleasant Hill, California.

9 5. In June 2015, Defendant The Pep Boys Manny Moe & Jack was the real
10 property owner of the building/parcel located at or about 520 Contra Costa
11 Boulevard, Pleasant Hill, California.

12 6. Defendant The Pep Boys Manny Moe & Jack is the current real property
13 owner of the building/parcel located at or about 520 Contra Costa Boulevard,
14 Pleasant Hill, California.

15 7. In March 2015, Defendant The Pep Boys Manny Moe & Jack was the
16 business owner of Pep Boys, located at or about 520 Contra Costa Boulevard,
17 Pleasant Hill, California (“Pep Boys”).

18 8. In April 2015, Defendant The Pep Boys Manny Moe & Jack was the
19 business owner of Pep Boys.

20 9. In May 2015, Defendant The Pep Boys Manny Moe & Jack was the
21 business owner of Pep Boys.

22 10. In June 2015, Defendant The Pep Boys Manny Moe & Jack was the
23 business owner of Pep Boys.

24 11. Defendant The Pep Boys Manny Moe & Jack is the current business
25 owner of Pep Boys.

26 12. Plaintiff does not know the true names of Defendants, their business
27 capacities, their ownership connection to the property and business, or their
28 relative responsibilities in causing the access violations herein complained of,

1 and alleges a joint venture and common enterprise by all such Defendants.
2 Plaintiff is informed and believes that each of the Defendants herein,
3 including Does 1 through 10, inclusive, is responsible in some capacity for the
4 events herein alleged, or is a necessary party for obtaining appropriate relief.
5 Plaintiff will seek leave to amend when the true names, capacities,
6 connections, and responsibilities of the Defendants and Does 1 through 10,
7 inclusive, are ascertained.

8

9 **JURISDICTION & VENUE:**

10 13. This Court has subject matter jurisdiction over this action pursuant to
11 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
12 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

13 14. Pursuant to supplemental jurisdiction, an attendant and related cause
14 of action, arising from the same nucleus of operative facts and arising out of
15 the same transactions, is also brought under California's Unruh Civil Rights
16 Act, which act expressly incorporates the Americans with Disabilities Act.

17 15. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
18 founded on the fact that the real property which is the subject of this action is
19 located in this district and that Plaintiff's cause of action arose in this district.

20

21 **FACTUAL ALLEGATIONS:**

22 16. Pep Boys is a facility open to the public, a place of public
23 accommodation, and a business establishment.

24 17. Parking is one of the facilities, privileges and advantages offered by
25 Defendants to patrons of Pep Boys.

26 18. And although Pep Boys had five parking spaces marked and reserved for
27 persons with disabilities in March 2015, Defendants failed to maintain the
28 disabled parking spaces in compliance with the Americans with Disabilities

1 Act Accessibility Guidelines (ADAAG).

2 19. In March 2015, the parking spaces marked and reserved for persons
3 with disabilities measured less than 216 inches in length.

4 20. In March 2015, the access aisles adjacent to the parking spaces marked
5 and reserved for persons with disabilities measured less than 216 inches in
6 length.

7 21. In March 2015, the parking spaces marked and reserved for persons
8 with disabilities did not have the required “Minimum Fine \$250” signage.

9 22. In March 2015, there were built-up curb ramps running into the access
10 aisles adjacent to the disabled parking spaces.

11 23. In March 2015, these curb ramps caused slopes greater than 2%.

12 24. And, in March 2015, these ramps were not accessible because they were
13 not protected by either handrails or guardrails, or flared sides.

14 25. In April 2015, Defendants failed to maintain their disabled parking
15 spaces in compliance with the ADAAG.

16 26. In April 2015, the parking spaces marked and reserved for persons with
17 disabilities measured less than 216 inches in length.

18 27. In April 2015, the access aisles adjacent to the parking spaces marked
19 and reserved for persons with disabilities measured less than 216 inches in
20 length.

21 28. In April 2015, the parking spaces marked and reserved for persons with
22 disabilities did not have the required “Minimum Fine \$250” signage.

23 29. In April 2015, there were built-up curb ramps running into the access
24 aisles adjacent to the disabled parking spaces.

25 30. In April 2015, these curb ramps caused slopes greater than 2%.

26 31. In April 2015, these ramps were not accessible because they were not
27 protected by either handrails or guardrails, or flared sides.

28 32. In May 2015, Defendants failed to maintain their disabled parking

1 spaces in compliance with the ADAAG.

2 33. In May 2015, the parking spaces marked and reserved for persons with
3 disabilities measured less than 216 inches in length.

4 34. In May 2015, the access aisles adjacent to the parking spaces marked
5 and reserved for persons with disabilities measured less than 216 inches in
6 length.

7 35. In May 2015, the parking spaces marked and reserved for persons with
8 disabilities did not have the required “Minimum Fine \$250” signage.

9 36. In May 2015, there were built-up curb ramps running into the access
10 aisles adjacent to the disabled parking spaces.

11 37. In May 2015, these curb ramps caused slopes greater than 2%.

12 38. In May 2015, these ramps were not accessible because they were not
13 protected by either handrails or guardrails, or flared sides.

14 39. In June 2015, Defendants failed to maintain their disabled parking
15 spaces in compliance with the ADAAG.

16 40. In June 2015, the parking spaces marked and reserved for persons with
17 disabilities measured less than 216 inches in length.

18 41. In June 2015, the access aisles adjacent to the parking spaces marked
19 and reserved for persons with disabilities measured less than 216 inches in
20 length.

21 42. In June 2015, the parking spaces marked and reserved for persons with
22 disabilities did not have the required “Minimum Fine \$250” signage.

23 43. In June 2015, there were built-up curb ramps running into the access
24 aisles adjacent to the disabled parking spaces.

25 44. In June 2015, these curb ramps caused slopes greater than 2%.

26 45. In June 2015, these ramps were not accessible because they were not
27 protected by either handrails or guardrails, or flared sides.

28 46. Currently, Defendants fail to maintain their disabled parking spaces in

1 compliance with the ADAAG.

2 47. Currently, the parking spaces marked and reserved for persons with
3 disabilities measure less than 216 inches in length.

4 48. Currently, the access aisles adjacent to the parking spaces marked and
5 reserved for persons with disabilities measure less than 216 inches in length.

6 49. Currently, the parking spaces marked and reserved for persons with
7 disabilities do not have the required “Minimum Fine \$250” signage.

8 50. Currently, there are built-up curb ramps running into the access aisles
9 adjacent to the disabled parking spaces.

10 51. Currently, these curb ramps cause slopes greater than 2%.

11 52. Currently, these ramps are not accessible because they are not protected
12 by either handrails or guardrails, or flared sides.

13 53. Plaintiff visited Pep Boys in March 2015.

14 54. Plaintiff visited Pep Boys in April 2015.

15 55. Plaintiff visited Pep Boys in May 2015.

16 56. Plaintiff visited Pep Boys in June 2015.

17 57. The plaintiff personally encountered these violations and they denied
18 him full and equal access.

19 58. These barriers caused Plaintiff great difficulty and frustration.

20 59. Because of the barriers, Plaintiff was forced to either park in a non-
21 disabled space and leave his van open with its lift deployed (to ensure his ability
22 to re-enter) or leave altogether.

23 60. Plaintiff would like to return and patronize Pep Boys but will be deterred
24 from visiting until the defendants cure the violations.

25 61. The violations identified above are easily removed without much
26 difficulty or expense. They are the types of barriers identified by the
27 Department of Justice as presumably readily achievable to remove and, in fact,
28 these barriers are readily achievable to remove. Moreover, there are numerous

1 alternative accommodations that could be made to provide a greater level of
2 access if complete removal were not achievable.

3 62. Additionally, on information and belief, the plaintiff alleges that the
4 failure to remove these barriers was intentional because: (1) these particular
5 barriers are intuitive and obvious; (2) the defendants exercised control and
6 dominion over the conditions at this location and, therefore, the lack of
7 accessible facilities was not an “accident” because, had the defendants
8 intended any other configuration, they had the means and ability to make the
9 change.

10 63. Given the obvious and blatant violation, the plaintiff alleges, on
11 information and belief, that there are other violations and barriers on the site
12 that relate to his disability. Plaintiff will amend the Complaint to provide
13 proper notice regarding the scope of this lawsuit once he conducts a site
14 inspection. However, please be on notice that the plaintiff seeks to have all
15 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
16 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
17 he can sue to have all barriers that relate to his disability removed regardless of
18 whether he personally encountered them).

19 64. Plaintiff is and has been deterred from returning and patronizing Pep
20 Boys because of his knowledge of the illegal barriers that exist. Plaintiff will,
21 nonetheless, return to the business to assess ongoing compliance with the
22 ADA and will return to patronize Pep Boys as a customer once the barriers are
23 removed.

24

25 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
26 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
27 Defendants.) (42 U.S.C. section 12101, et seq.)

28 65. Plaintiff re-pleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this
2 complaint.

3 66. Under the ADA, it is an act of discrimination to fail to ensure that the
4 privileges, advantages, accommodations, facilities, goods and services of any
5 place of public accommodation is offered on a full and equal basis by anyone
6 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
7 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 8 a. A failure to make reasonable modifications in policies,
9 practices, or procedures, when such modifications are
10 necessary to afford goods, services, facilities, privileges,
11 advantages, or accommodations to individuals with
12 disabilities, unless the accommodation would work a
13 fundamental alteration of those services and facilities. 42
14 U.S.C. § 12182(b)(2)(A)(ii).
- 15 b. A failure to remove architectural barriers where such
16 removal is readily achievable. 42 U.S.C. §
17 12182(b)(2)(A)(iv). Barriers are defined by reference to the
18 ADAAG, found at 28 C.F.R., Part 36, Appendix "D."
- 19 c. A failure to make alterations in such a manner that, to the
20 maximum extent feasible, the altered portions of the
21 facility are readily accessible to and usable by individuals
22 with disabilities, including individuals who use
23 wheelchairs or to ensure that, to the maximum extent
24 feasible, the path of travel to the altered area and the
25 bathrooms, telephones, and drinking fountains serving the
26 altered area, are readily accessible to and usable by
27 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

1 67. Any business that provides parking spaces must provide accessible
2 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. To qualify
3 as a reserved handicap parking space, the space must be properly marked and
4 designated. Under the ADA, the method, color of marking, and length of the
5 parking space are to be addressed by state or local laws or regulations. See 36
6 C.F.R., Part 1191, § 502.3.3. Under the California Building Code, to properly
7 and effectively reserve a parking space for persons with disabilities, each
8 parking space must be at least 216 inches in length. CBC § 11B-502.2. The
9 access aisle must extend the full length of the parking spaces it serves. 2010
10 Standards § 502.3.2. Under the California Building Code, to properly and
11 effectively reserve a parking space for persons with disabilities, each such
12 space must be identified with a reflectorized sign permanently posted adjacent
13 to and visible from each stall or space. CBC § 1129B.4. The sign must consist
14 of the International Symbol of Accessibility (♿) in white on a blue background.
15 *Id.* An additional sign or additional language below the symbol of accessibility
16 must state, “Minimum Fine \$250” to ensure that the space remains available
17 for persons with disabilities. *Id.*

18
19 68. Here, the failure to provide parking spaces at least 216 inches in length
20 is a violation of the ADA.

21
22 69. Here, the failure to provide access aisles at least 216 inches in length is
23 a violation of the ADA.

24 70. Here, the failure to post the required “Minimum Fine \$250” is a
25 violation of the ADA.

26 71. Under the 1991 Standards, parking spaces and access aisles must be
27 level with surface slopes not exceeding 1:50 (2%) in all directions. 1991
28 Standards § 4.6.3. Here, the access aisle is not level and has a ramp taking up

1 part of the access aisle. Under the 2010 Standards, access aisles shall be at the
2 same level as the parking spaces they serve. Changes in level are not permitted.
3 2010 Standards 502.4. "Access aisle are required to be nearly level in all
4 directions to provide a surface for wheelchair transfer to and from vehicles."
5 2010 Standards § 502.4 Advisory. Specifically, built up curb ramps are not
6 permitted to project into access aisles and parking spaces. *Id.* No more than a
7 1:48 slope is permitted. 2010 Standards § 502.4.

8 72. Here the failure to provide level parking is a violation of the ADA.

9 73. Additionally, if a curb ramp is not protected by handrails or guardrails,
10 it shall have flared sides. 1991 Standards § 4.7.5. Ramps with drop-offs must
11 have curbs, walls, railings, or projecting surfaces that prevent people from
12 slipping off the ramp. 1991 Standards § 4.8.7.

13 74. Here, the failure to provide edge protection for these ramps is a violation
14 of the ADA.

15 75. A public accommodation must maintain in operable working condition
16 those features of its facilities and equipment that are required to be readily
17 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

18 76. Here, the failure to ensure that the accessible facilities were available
19 and ready to be used by the plaintiff is a violation of the ADA.

20 77. Given its location and options, Pep Boys is a location that the plaintiff
21 will continue to desire to patronize but he has been and will continue to be
22 discriminated against due to the lack of accessible facilities.

23

24

25 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
26 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
27 Code § 51-53.)

28 78. Plaintiff re-pleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this
2 complaint.

3 79. Because the defendants violated the plaintiff's rights under the ADA,
4 they also violated the Unruh Civil Rights Act and are liable for damages. (Cal.
5 Civ. Code § 51(f), 52(a).)

6 80. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
7 discomfort, or embarrassment for the plaintiff, the defendants are also each
8 responsible for statutory damages, *i.e.*, a civil penalty. (Cal. Civ. Code §
9 55.56(a)-(c).)

10 81. Although the plaintiff was markedly frustrated by facing discriminatory
11 barriers and this frustration possibly qualifies as an emotional distress injury,
12 even manifesting itself with minor and fleeting physical symptoms, the
13 plaintiff does not value this very modest frustration and physical personal
14 injury greater than the amount of the statutory damages.

15

16 **PRAYER:**

17 Wherefore, Plaintiff prays that this Court award damages and provide
18 relief as follows:

19 1. For injunctive relief, compelling Defendants to comply with the
20 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
21 plaintiff is not invoking section 55 of the California Civil Code and is not
22 seeking injunctive relief under the Disabled Persons Act at all.

23 2. Damages under the Unruh Civil Rights Act, which provides for actual
24 damages and a statutory minimum of \$4,000.

25 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
26 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

1 Dated: May 28, 2016

CENTER FOR DISABILITY ACCESS



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3 By: _____
4 Mark Potter, Esq.
5 Attorneys for Plaintiff

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